

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO**

CRAIG WILSON, ERIC BELLAMY,  
KENDAL NELSON, and MAXIMINO  
NIEVES, on behalf of themselves and those  
similarly situated,

*Petitioners,*

v.

MARK WILLIAMS, warden of Elkton  
Federal Correctional Institutions; and  
MICHAEL CARVAJAL, Federal Bureau of  
Prisons Director, in their official capacities,

*Respondents.*

Case No. 20-cv-0794

Judge James Gwin

**PETITIONERS' EMERGENCY MOTION FOR EXPEDITED DISCOVERY  
AND ENTRY OF PROTECTIVE ORDER**

By order issued today, the Sixth Circuit has denied Respondents' request for a stay pending appeal; there can be no further cause for delay in carrying out this Court's interim order. As time is of the essence to transfer vulnerable people out of a setting where infection is rapidly spreading, Petitioners respectfully move this Court for an order (1) expediting discovery pertaining to the interim class's membership and the process for carrying out the Court's order, and (2) entering a proposed protective order to protect any confidential information.

Following this Court's Order granting preliminary injunctive relief, *see* ECF No. 22, Respondents have filed a proposed list of members of the medically-vulnerable subclass, *see* ECF No. 35-1. Even on its surface, the list is clearly underinclusive. For example, Petitioners and interim class representatives Eric Bellamy (who has a heart valve condition and hypertension) and

Craig Wilson (who has asthma) are omitted. Petitioners are also aware of at least two Elkton prisoners who are 65 years old, but are not listed.<sup>1</sup>

Further, on Monday, April 27, this Court ordered Respondents to propose an agreed protective order and to produce to Petitioners the criteria used to create the proposed class list. Respondents did not provide a proposed order until shortly before close of business on Friday, May 1. Petitioners proposed an edited version approximately three and a half hours later, and proposed an additional edit by email at approximately 5:00 pm on Monday, May 4, but have received no response. Attached hereto as Exhibit A is Petitioners' latest proposal.

It is of the utmost urgency that the interim subclass be complete, so as to provide its members with the prescribed relief under the Court's Order—quite literally, before it is too late. As the Sixth Circuit today noted, “Respondents received fourteen days in which to evaluate each subclass member's eligibility for transfer out of Elkton. Assuming Respondents have been complying with this directive while the motion to stay is pending, their time to comply is about to expire, rendering any remaining harm slight.” There are no grounds for further delay.

Accordingly, Petitioners respectfully request that the Court enter an Order requiring Respondents to produce the below-requested documents and information:

- a) By 5:00 pm on Tuesday, May 5, 2020 as to Requests 1-6, which pertain to the class list that Respondents prepared approximately 11 days ago;
- b) By 4:00 pm on Wednesday, May 6, 2020 as to Requests 7-9, which pertain to the evaluations that this Court ordered completed on that date.

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<sup>1</sup> George Rafidi, No. 60492-060, and Vincent Pisciotta, No. 23174-045 are both 65 years old according to the BOP's online “Inmate Locator.” Federal Bureau of Prisons, *Find an inmate*, <https://www.bop.gov/inmateloc/>; See ECF No. 22 at 12 (preliminary class includes all Elkton prisoners “65 years or older”). Neither is on the Proposed Class List.

**I. Proposed Discovery Requests to Respondents**

1. Identify all search terms and any further criteria for producing the list, including any information necessary to explain the meaning of each search term, to identify the database(s) searched, and the scope of those databases.
2. To the extent not encompassed by item 1, identify all medical conditions encompassed by Respondents' search.
3. Identify all databases and repositories available to Respondents, including any collection or source of documents or electronically stored information, that may contain medical information relevant to identify individual prisoners who suffer from specified medical conditions.
4. Identify by name, title, and employer, all persons involved in the preparation of the proposed class list.
5. State any and all reasons why Petitioners Eric Bellamy and Craig Wilson were deemed not to qualify for the proposed class list.
6. State any and all reasons why a prisoner age 65 years or older would not be listed on the proposed class list.
7. Identify all criteria being used by Respondents for the evaluations of each subclass member's eligibility for transfer out of Elkton as ordered by the Court, *see* ECF No. 22 at 20.
8. For each subclass member, state the results of the evaluation referred to in paragraph 7 above. To the extent that the evaluation results in a disposition for that individual that is other than compassionate release, parole or community supervision, furlough, and/or home confinement, state which factor or factors Respondents found to render that individual ineligible for such dispositions.

9. For each subclass member, state the date on which he will be or has been transferred, furloughed, or otherwise released from Elkton.

## **II. Proposed Protective Order**

Petitioners also respectfully request that, to the extent that the parties are unable to reach agreement in good faith on a protective order, the proposed order attached hereto as Exhibit A be deemed to be the operative order as of 5:00 pm on May 5, 2020.

## **CONCLUSION**

For the foregoing reasons, Petitioners respectfully request that this Court enter an order requiring Respondents to produce the documents and information requested in Section I above by 4:00 pm on May 6, 2020, and that unless the parties agree otherwise prior to that same time, Exhibit A hereto be deemed to be the operative protective order for confidential documents and information in this action.

Dated: May 4, 2020

Respectfully submitted,

/s/ David J. Carey

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*Counsel for Petitioners*

**CERTIFICATE OF SERVICE**

I hereby certify that on May 4, 2020, the foregoing was filed with the Court's CM/ECF system. Notice of this filing will be sent by operation of that system to all counsel of record.

/s/ David J. Carey  
David J. Carey (0088787)

*Counsel for Petitioners*